

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 2012-136-C

IN RE:)	PETITION TO IMPLEMENT THE FCC’S
)	INTER-CARRIER COMPENSATION AND
Office of Regulatory Staff Petition to)	UNIVERSAL SERVICE REFORM ORDER
Review FCC Mandated Reductions to)	
Intrastate Access Tariffs)	

Competitive Carriers of the South¹ Inc. (“CompSouth”) (“Petitioner”), by its undersigned attorneys, hereby petition the South Carolina Public Service Commission (the “Commission”), pursuant to Rule 103-825 of the Commission’s Rules, to implement all Federal Rules and other requirements in effect as a result of the Federal Communications Commission’s Order 11-161 on Inter-Carrier Compensation and Universal Service Reform (the “ICC Reform Order”). In support of its petition, CompSouth would show the Commission the following:

I. BACKGROUND

1. CompSouth is a trade association whose members are telecommunications service providers authorized to provide telecommunications services in various states through the southern United States, including the state of South Carolina.

2. On November 18, 2011, the FCC issued its Order 11-161 on Inter-Carrier Compensation and Universal Service Reform (the “ICC Reform Order”).

¹ CompSouth members include Access Point Inc., Birch Communications, Inc., Cbeyond Communications LLC., Covad Communications Company, EarthLink Business, Level 3 Communications, tw telecom inc., and XO Communications Services, Inc.

3. The rules adopted in the ICC Reform Order relevant to this Petition became effective December 29, 2011.

4. On March 29, 2012, the Office of Regulatory Staff (“ORS”) filed a petition requesting that the Commission order all local exchange carriers affected by the ICC Reform Order to file appropriate tariff revisions as required by the ICC Reform Order.

5. The ORS requested in its petition that the Commission establish a proceeding and a deadline of June 1, 2012 for the requisite tariff filings, including Supporting Documentation.

II. MOTION TO CONSIDER AND IMPLEMENT ICC REFORM ORDER

1. Petitioner commends the Commission for acting on the Petition of the ORS to review the carriers’ switched access tariffs in advance of the effective date to ensure that the tariffs comply with the ICC Reform Order. As set out herein, there are additional provisions of the ICC Reform Order and the FCC Rules that this Commission must implement.

2. The FCC’s requirement that carriers modify certain intrastate tariffs is but one particular piece of the FCC’s broad reform of intercarrier compensation in general and access charges in particular. Accordingly, The ICC Reform Order adopts a “uniform national bill-and-keep” pricing methodology as the ultimate default methodology that will apply to all telecommunications traffic, both interstate and intrastate. (ICC Reform Order ¶ 34).

3. Congress has delegated to the FCC the power to preempt state law in the deployment of advanced telecommunications capabilities, such as broadband networks, to all Americans and in support of telecommunications services designated as eligible for universal service support. (ICC Reform Order ¶¶ 60-73, 767).

4. The ORS has recognized the FCC’s preemptive power in its Petition filed in this

Docket, in particular the FCC's mandate that intrastate tariffs be modified by carriers under the jurisdiction of the Commission.

5. One of the stated purposes of the ICC Reform Order is to reform and modernize the universal service and intercarrier compensation ("ICC") systems, transitioning those "outdated systems" to the Connect America Fund ("CAF") via "fiscally responsible, accountable, incentive-based policies." (ICC Reform Order ¶ 1).

6. The ICC Reform Order is carefully crafted to develop an ICC mechanism designed to accelerate the deployment of broadband, and any state funding outside the parameters of the ICC Reform Order will frustrate the scheme and thus the underlying purpose.

7. The FCC Order states, "In this Order, we explicitly supersede the traditional access charge regime and . . . regulate terminating access traffic in accordance with the 251(b)(5) framework." (FCC Order ¶ 764). The FCC adopted precise pricing rules that immediately apply to all terminating charges, including intrastate switched access charges. (FCC Order ¶ 801). Moreover, the FCC concurrently issued an FNPRM to examine changes or reductions in intrastate originating switched access. (FCC Order ¶¶ 739, 777-778).

8. Under the ICC Reform Order, ILECs are permitted to charge a monthly Access Recovery Charge ("ARC") to partially offset the decline in ICC revenue due to ICC reform and reduction of intrastate terminating switched access rates. The calculation of the ARC is subject to a number of rules and limitations and may be combined with the Subscriber Line Charge ("SLC") on end user bills. (ICC Reform Order ¶ 36-37).

9. The ICC Reform Order also creates the Connect America Fund ("CAF") to provide additional support to ILECs for any otherwise-eligible revenue not recovered by the ARC. (ICC

Reform Order ¶¶ 37).

10. By establishing the CAF, the FCC, as is its prerogative, removed any need for the states to establish or continue *any* recovery mechanism for intrastate switched access reductions.

Specifically, paragraph 795 of the ICC Reform Order states:

In addition, as noted above, adopting a uniform federal transition and recovery mechanism will free states from potentially significant financial burdens. Our recovery mechanism will provide carriers with recovery for reductions to eligible interstate and intrastate revenue. As a result, states will not be required to bear the burden of establishing and funding state recovery mechanisms for intrastate access reductions, while states will continue to play a role in implementation. . .

11. The ARC and CAF created under the ICC Reform Order are intended to be the exclusive mechanism by which ILECs may be compensated for the reduction of intrastate switched access rates, provided, however, that if an ILEC believes it needs additional support, it must petition the FCC and “demonstrate a need” for such support by a showing of credible evidence such as a rate case or other evidentiary hearing. (ICC Reform Order ¶¶ 924-27).

12. The South Carolina Interim LEC Fund (“ILF”) was established by the General Assembly for the specific purpose of allowing incumbent local exchange carriers (“ILECs”) to “recover those revenues lost through the concurrent reduction of the intrastate switched access rates.”

13. S.C. Code Ann. § 58-9-280, provides the following:

(L) Upon enactment of this section and the establishment of the Interim LEC Fund, as specified in subsection (M) of this section, the commission shall, subject to the requirements of federal law, require any electing incumbent LEC, other than an incumbent LEC operating under an alternative regulation plan approved by the commission before the effective date of this section, to immediately set its toll switched access rates at levels comparable to the toll switched access rate levels of the largest LEC operating within the State. To offset the adverse effect on the revenues of the incumbent LEC, the commission shall allow adjustment of other rates not to exceed statewide average rates, weighted by the number of access

lines, and shall allow distributions from the Interim LEC Fund, as may be necessary to recover those revenues lost through the concurrent reduction of the intrastate switched access rates.

(M) The commission shall, not later than December 31, 1996, establish an Interim LEC Fund to be administered by the Office of Regulatory Staff or a designee. The Interim LEC Fund shall initially be funded by those entities receiving an access or interconnection rate reduction from LEC's pursuant to subsection (L) in proportion to the amount of the rate reduction. To the extent that affected LEC's are entitled to payments from the USF, the Interim LEC Fund must transition into the USF as outlined in Section 58-9-280(E) when funding for the USF is finalized and adequate to support the obligations of the Interim LEC Fund.

14. The Commission opened Docket No. 96-318-C to implement the ILF, and twenty-five (25) ILECs elected to participate in the ILF. Each such ILEC 1) set its toll switched access rates at levels comparable to those of BellSouth Telecommunications, Inc. ("BellSouth"); and 2) began to "recover those revenues lost through the concurrent reduction of the intrastate switched access rates" on an annual basis from the ILF.

15. Upon information and belief, the participating ILECs receive approximately \$32 million annually from the ILF to offset their access charge reductions.

16. Members of CompSouth are required to fund the ILF.

17. Because the ILF exists solely to allow the LECs to recover "lost" intrastate switched access revenue, it cannot continue in view of the ICC Reform Order's treatment of access charge reductions, because the ARC and CAF will compensate ILECs for that revenue loss. If the ILF remains in place for this purpose in addition to the FCC's ARC and CAF, there is a significant risk of double-recovery windfall by the ILECs that will ultimately be paid by South Carolina consumers.

18. Since the Commission's implementation of the ILF could not have taken into account the ICC Reform Order, which dramatically alters the telecommunications landscape in relation to the

matters addressed by previous state law, such implementation must now be re-examined and modified to conform to the ICC Reform Order. The continued imposition of the ILF results in composite intrastate switched access rates that are not compliant with the FCC order.

19. At a minimum, any revenue recovery for intrastate terminating switched access must be eliminated concurrent with the explicit per-minute reduction of intrastate switched access rates

III. CONCLUSION

WHEREFORE, for the above stated reasons, CompSouth respectfully requests the Commission to expand the issues considered in this Docket to include full implementation of the ICC Reform Order, modify the implementation of South Carolina's ILF consistent with the ICC Reform Order as set forth above, and grant such other relief as the Commission deems just and proper.

Respectfully submitted,

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Columbia, South Carolina

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Office of Regulatory Staff Petition to
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CERTIFICATE OF SERVICE

This is to certify that I have caused to be served this day, the **Petition to Implement the FCC's Inter-Carrier Compensation and Universal Service Reform Order** filed by the Competitive Carriers of the South, Inc. by placing a copy of same in the care and custody of the United States Postal Service (unless otherwise specified), with proper first-class postage affixed hereto and addressed as follows:

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May 2, 2012
Columbia, South Carolina